

## Department of the Army, DoD

## § 518.15

Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within an Army Activity or a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

(4) Excluded from exemption 7 are two situations applicable to DoD. (Activities considering invoking an exclusion based on the following scenarios should first consult through legal counsel, to the DoJ, Office of Information and Privacy (DoJ OIP).

(i) Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Activities may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such a situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within an Army Activity or a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Activity may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the requester will state that no records were found.

(h) *Number 8 (5 U.S.C. 552 (b)(8))*. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regu-

lation or supervision of financial institutions.

(i) *Number 9 (5 U.S.C. 552 (b)(9))*. Those containing geological and geophysical information and data (including maps) concerning wells.

### Subpart D—For Official Use Only

#### § 518.14 General.

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public because disclosure would cause harm to an interest protected by one or more FOIA exemptions 2 through 9 (see Subpart C of this part) shall be considered as being for official use only (FOUO). No other material shall be considered FOUO and FOUO is not authorized as an additional form of classification to protect national security interests. Additional information on FOUO and other controlled, unclassified information may be found in DoD 5200.1-R, "Information Security Program" or by contacting the DA FOIA/PA Office.

### Subpart E—Release and Processing Procedures

#### § 518.15 General provisions.

(a) Since the policy of the DoD is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for an Army record made under the provisions of 5 U.S.C. 552 (a)(3) of the FOIA may be denied only when:

(1) The record is subject to one or more of the exemptions of the FOIA;

(2) The record has not been described well enough to enable the Army Activity to locate it with a reasonable amount of effort by an employee familiar with the files; or

(3) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the Army Activity concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request, or a statement certifying under